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JUL 13 2004

OFFICE OF PETITIONS

In re Application of :
Thomson, et al. :
Application No. 10/813,640 : **DECISION ON PETITION**
Filed: 30 March, 2004 :
Attorney Docket No.: THMC:015US/MTG :

This is a decision on the petition (styled as a "Petition to Correct and Incorrectly Entered Date-In" on an Express Mail Mailing Label Under 37 C.F.R. §1.10(d)), filed on 18 June, 2004, and seeking for the above-identified application a filing date of 29 March, 2004, instead of the presently accorded filing date of 30 March, 2004.

The petition is **DISMISSED**.

NOTES:

- (1) Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.10(d)."
- (2) There will be no further reconsideration thereafter.

BACKGROUND AND ANALYSIS

The record reflects that:

- the instant application was received and given a filing date of 30 March, 2004;

- the petition recites that attachments/enclosures include, *inter alia*, copies of the Transmittal Cover Sheet, the return post card, US Postal Service (USPS) Express Mail Label No. EV414834354US, and indicates that the instant application was one of four deposited at the same time—however, two of the applications received a filing date of 29 March, 2004, and this application and one other received a filing date of 30 March, 2004;
- notably, the petition does not contain a reference to and is not accompanied by a copy of a mail log or other document recording the mail transactions that came into existence within one (1) business day of the mail deposit alleged;

Under the provisions of 37 C.F.R. §1.10(d),¹ “[a]ny showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the “Express Mail Post Office to Addressee” service of the USPS.” (Emphasis supplied.)

Petitioner has indicated via telephone that no such documentary evidence was created by his office in compliance with the regulation.

A review of the USPS “Track and Confirm” Shipment Details website data regarding USPS Express Mail Label No. EV414834354US indicates that the package was “ENROUTE, March 30, 2004, 4:49 pm, AUSTIN, TX 78799.”

Therefore, as of this writing, Petitioner has failed to satisfy the showing requirement of the regulation and the petition must be and hereby is dismissed.

¹ The regulations at 37 C.F.R. §1.10 provide, in pertinent part:
 § 1.10 Filing of papers and fees by “Express Mail.”

(a) Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the “Express Mail Post Office to Addressee” service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the “date-in” on the “Express Mail” mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6(a).

(d) Any person filing correspondence under this section that was received by the Office and delivered by the “Express Mail Post Office to Addressee” service of the USPS, who can show that the “date-in” on the “Express Mail” mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the “Express Mail” mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by “Express Mail”; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the “Express Mail Post Office to Addressee” service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the “Express Mail Post Office to Addressee” service of the USPS.

(f) The Office may require additional evidence to determine if the correspondence was deposited as “Express Mail” with the USPS on the date in question. (Emphasis supplied.)

[48 Fed. Reg. 2708, Jan. 20, 1983, added effective Feb. 27, 1983; 48 Fed. Reg. 4285, Jan. 31, 1983, paras. (a) & (c), 49 Fed. Reg. 552, Jan. 4, 1984, effective Apr. 1, 1984; paras. (a)-(c) revised and paras. (d) - (f) added, 61 Fed. Reg. 56439, Nov. 1, 1996, effective Dec. 2, 1996; paras. (d) & (e) revised, 62 Fed. Reg. 53131, Oct. 10, 1997, effective Dec. 1, 1997]

The renewed petition, if any, must be accompanied by the corroborating evidence required by 37 C.F.R. §1.10(d).

Any further correspondence with regard to this matter should be addressed as follows:

By mail: (Effective 1 May, 2003)²
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306 (IFW Formal Filings)
ATTN.: Office of Petitions

By hand: Customer Service Window
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Crystal Plaza Two
2011 South Clark Place
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Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.



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Office of Petitions

² To determine the appropriate addresses for other subject-specific correspondence, refer to the USPTO Web site at www.uspto.gov.